




MAINE STATE LEGISLATURE

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To: Members, Joint Select Committee on Regulatory Fairness and Reform

From: Patrick Norton, OPLA 

Re: LRs and LDs related to the Governor's Phase 1 proposals

Attached is an annotated list of the Governor's Phase 1 regulatory proposals showing the LRs and LDs that are (or appear to be) related to each proposal. I thought this might help the committee as it works through the recommendations and decides which policy committees have related bills.

Thank you.

Phase I of Governor's Regulatory Reform Proposals
Related LRs and LDS
(as identified by the Office of Policy and Legal Analysis)

Administrative Procedures Act

- Require all agencies to prepare and publish a Jobs Impact Analysis for every new rule proposed and publish it at the time it is posted for rulemaking.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Require all agencies to provide a comprehensive fiscal impact report with each new rule proposed and publish it at the time it is posted for rulemaking. This is currently loosely required under the Administrative Procedures Act, but not completed in practice.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Reduce the standard of deference to administrative agencies that is currently used in the court system on appeals and require a preponderance of evidence standard be applied by the court on appeal.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Require landowner permission prior to gathering data that will be used in public venues for zoning and regulatory purposes. Specific examples including the mapping of deer yards and other wildlife habitat.
 - **No LDs or LRs identified**

APA-related bills

- **LD 158; Saviello; An Act To Improve Public Understanding in Rulemaking (SLG)**
- **LD 543; Prescott; An Act To Protect Legislative Intent in Rulemaking (SLG)**
- **LR 711; Gifford; An Act To Require That All Agency Rules Be Subject to Legislative Review and Approval (SLG)**
- **LR 963; McKane; An Act To Improve Legislative Processing of Administrative Rule Changes(SLG)**
- **LR1170; Sherman; An Act To Require Certain Costly Rules To Be Approved by the Legislature (SLG)**
- **LR 1500; Courtney; An Act To Amend the Laws Governing the Deference Afforded to Agency Decisions (SLG)**

- **LR 1558; Carey; An Act To Provide Public Transparency in Rulemaking (SLG)**
- **LR 1889; Walsh Innes; An Act To Implement the Recommendations of the Joint Standing Committee on State and Local Government To Change the Maine Administrative Procedure Act (SLG)**

Municipalities

- Prevent municipalities from creating retroactive ordinances.
 - **LD 86; Schneider; An Act to Provide Certainty to Businesses and Development (SLG)**

Regulatory Ombudsman

- Create a Small Business Ombudsman in the Department of Economic and Community Development to help businesses navigate regulatory processes.
 - **Governor's proposed amendment to LD 1 (RFR)**

Department of Environmental Protection

- Replace the Board of Environmental Protection with a full-time professional administrative law judge system that will hear appeals of major permits and DEP administrative enforcement actions.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Designate DEP as the entity to promulgate all environmental rules (through typical notice and comment rulemaking procedures) and issue all environmental permits (following a public hearing for major applications).
 - **Governor's proposed amendment to LD 1 (RFR)**
- Internalize to DEP functions that are currently managed by various disparate state agencies (*e.g.*, aboveground storage tanks at State Fire Marshal, drinking water systems at DHHS, Site Law permit significant wildlife habitat analysis at DIF&W.)
 - **No LRs or LDs identified**
- Require inclusion of a regulatory impact analysis (*i.e.*, cost-benefit analysis) in all environmental rulemakings.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Adopt a standard for rulemaking requiring rules to be predicated on valid science and clarity of language.
 - **Governor's proposed amendment to LD 1 (RFR)**
Annotated by the Office of Policy and Legal Analysis

- Conform Maine statutory and regulatory standards to federally required standards.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Establish a General Permit for small air emission sources. EPA doesn't require air licenses for small emissions sources, but Maine DEP does. A simpler, General Permit process would be more appropriate for small sources and free up additional Air Bureau resources for larger projects.
 - **No LRs or LDs identified**
- When rulemaking regarding EPA's 1-hour sulfur dioxide standard begins, DEP should not exceed the requirements of the federal standard.
 - **No LRs or LDs identified**
- Change DEP rules to require Best Available Control Technology (BACT) only for major sources and major modifications. Currently, BACT is only required for these major projects at the federal level, but the Maine DEP requires BACT for minor sources and minor modifications without being required to by federal law.
 - **No LRs or LDs identified**
- Repeal of Resolve 2010, Chapter 206 which has caused DEP to include stringent greenhouse gas requirements in its standards for Site Law assessment.
 - **No LRs or LDs identified**
- Reconsider and revise statutorily allowable sulfur levels, considering elimination. The federal EPA requires each state to show reasonable progress toward natural visibility conditions near national parks by 2064. With this as a reason, DEP encouraged this statutory lowering of allowable sulfur in residual fuel oil from 2% to 0.5% beginning in 2018, which is anticipated to substantially increase cost.
 - **No LRs or LDs identified**
- Align the DEPs process for regulating air emissions of the startup, shutdown and unavoidable malfunctions procedures for industrial facilities with the federally required process. This allows excess emissions as a result of these events to be exempted from penalty, which DEP now only sometimes does.
 - **No LRs or LDs identified**
- Review all consumer products recycling and "take-back" statutes and revise as necessary to develop a policy that ensures that manufacturers do not have to pay to recycle their consumer products and that these standards do not exceed those set in federal law.

- **LR 1323; Walsh Innes; An Act to Provide for the Collection and Recycling or Proper Disposal of Hazardous Household Waste (ENR)**
- **LR 1325; Walsh Innes; An Act to Promote the Proper Disposal of Used Medical Sharps (ENR)**
- **LR 1326; Walsh Innes; An Act To Improve the Recycling Rate of Mercury-added Motor Vehicle Components (ENR)**
- **LR 1327; Walsh Innes; An Act to Make It Easier for Small Businesses to Recycle Electronics (ENR)**
- **LR 1328; Walsh Innes; An Act to Make It Easier for Small Businesses to Recycle Fluorescent Lamps (ENR)**
- **LR 1749; Hastings; Resolve, to Study Initiatives that Would Increase recycling in Maine by Replacing the Bottle Bill with a Comprehensive Statewide Recycling Program (ENR)**
- **LR 1974; Martin; An Act to Repeal the Bottle Redemption law and Restructure the Return of Recyclable Materials (ENR)**
- Review all regulation of consumer products and consider revisions to prohibitions of chemicals and materials in products. If the state is going to regulate consumer products at all, it should only do so when clearly justified on risk-benefit or cost benefit basis.
 - **Governor's proposed amendment to LD 1 (RFR)**
 - **LD 412; Hamper; Resolve, Regarding Legislative Review of Portions of Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products, a Major Substantive Rule of the Department of Environmental Protection (ENR)**
 - **LR 1764; Cray; An Act to Clarify Maine's Phaseout of the Deca Mixture of Polybrominated Diphenyl Ethers (ENR)**
 - **LR 1960; Snowe-Mello; An Act To Clarify Maine's Phaseout of the "Deca" Mixture of Polybrominated Diphenyl Ethers (ENR)**
- Repeal the "new crossing" statute created by the 124th Legislature regarding culverts.
 - **No LRs or LDs identified**
- Repeal BPA rule and rely on federal EPA and FDA standards.
- Repeal DEP regulations requiring that medical sharps be shredded prior to disposal

- **No LRs or LDs identified**
- Adopt a statute of limitations for filing suit for environmental violations based on the federal statute of limitations of 6 years.
 - **Governor's proposed amendment to LD 1 (RFR)**
 - **LD 281; Snowe-Mello; An Act To Create a 5-year Statute of Limitations for Environmental Violations (JUD)**
- Eliminate "per day" penalty minimums of \$100 to allow discretion in setting penalties for long-term or long-passed violations and prohibit penalty assessment when delay has been caused by the state.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Define currently ambiguous terms in the Uncontrolled Hazardous Substances Sites Law ("UHSSL"). Adopt a statutory cause of action for contribution to the UHSSL. Adopt UHSSL regulations and guidance consistent with existing Federal standards.
 - **No LRs or LDs identified**
- Adopt an environmental audit law or policy, identical to the version used by the federal EPA. This forgives gravity-based penalties for discovery of non-compliance during a compliance assessment or part of an environmental management program when the problem is promptly disclosed and corrected.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Require Notices of Violation ("NOV") to be issued by DEP within 30 days of an observed violation.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Establish a statute of limitations on DEP sign-off on spill clean up.
 - **No LRs or LDs identified**
- Align the details of state's requirements for reporting of estimated hazardous waste with the less expansive federal standards. Specifically, with regard to:
 - *de minimis* exemptions
 - list of compounds
 - reporting thresholds
 - **Governor's proposed amendment to LD 1 (RFR)**

- Allow businesses to inspect their hazardous waste weekly rather than daily. The federal EPA currently requires a weekly inspection, but the Maine DEP requires daily.
 - **Governor's proposed amendment to LD 1 (RFR)**
- Align state universal waste rules with federal universal waste rules. Currently, DEP has more stringent and costly regulations than those that are required at the federal level for universal waste (which includes fluorescent lamps and certain batteries).
 - **Governor's proposed amendment to LD 1 (RFR)**
- Create exemptions in DEP rules that recognize that many valuable materials are not hazardous wastes or solid wastes and managed and transferred as commercial materials
 - **Governor's proposed amendment to LD 1 (RFR)**
- Amend the Natural Resource Protection Act to clarify that the setback for shorebird feeding and roosting area and waterfowl wading habitat is 75 feet, consistent with the setback for rivers, streams, brooks & wetlands.
 - **LR 347; Collins; An Act To Change Setbacks in the Natural Resources Protection Act (ENR)**
- Reduce setback requirements related to vernal pools.
 - **LD 156; Rector; An Act To Clarify the Regulation of Impacts to Significant Vernal Pool Habitats under the Natural Resources Protection Act (ENR)**
 - **LD 341; Thomas; An Act To Exempt Artificial Wetlands and Artificial Significant Vernal Pool Habitats from State Regulation (ENR)**
 - **LR 347; Collins; An Act To Change Setbacks in the Natural Resources Protection Act (ENR)**
 - **LR 1161; Thomas; An Act To Reduce the Buffer Zones around Vernal Pools and Other Bodies of Water (ENR)**
 - **LR 1455; Thibodeau; An Act Regarding Property Rights and Setbacks for Vernal Pools (ENR)**
- Exempt modification to existing residential or commercial structures in coastal sand dune systems from any State permitting requirement where the modification does not extend beyond the existing impervious area and does not increase the building's total height.
 - **Governor's proposed amendment to LD 1 (RFR)**

- **LD 387; Chase; An Act To Amend the Natural Resources Protection Act Regarding Coastal Sand Dune Systems (ENR)**
- Create a DEP waiver for construction in sand dunes required for ADA purposes.
 - **No LRs or LDs identified**
- Change DEP rules to allow vertical building additions in the frontal sand dunes regardless of whether or not the entire building is on posts. Currently, for any of these additions, it is required to be on posts, regardless of the scale or importance of the project.
 - **No LRs or LDs identified**
- Review the Site Location of Development Act (“SLODA”) and the Natural Resources Protection Act (“NRPA”) and implementing regulations to modify applicability thresholds and to set objective standards for review of applications.
 - **Governor’s proposed amendment to LD 1 (RFR)**
- Repeal the Informed Growth Act.
 - **Governor’s proposed amendment to LD 1 (RFR)**
 - **LD 322; Clark, T; An Act To Repeal the Informed Growth Act (SLG)**
 - **LR 356; Hastings; An Act To Repeal the Informed Growth Act (SLG)**
 - **LR 528; Harvell; An Act To Repeal the Informed Growth Act (SLG)**
- Create a process for minor added projects or revisions to large projects that have already been approved under Site Law to reduce administrative burden of these smaller initiatives.
 - **Governor’s proposed amendment to LD 1 (RFR)**
- Review the Site Location of Development Act (“SLODA”) and the Natural Resources Protection Act (“NRPA”) and implementing regulations to modify applicability thresholds and to set objective standards for review of applications. Specifically:
 - Require a decision within 30-days of receipt.
 - Eliminate 3rd Party Inspectors
 - Eliminate DEP review if there is adequate review at the municipal level
 - Require DEP neutrality on the merits of a project.
 - Reduce Site Law filing fees.

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- Extended the manufacturing exemption in 38 MRSA §488 (7) to other types of facilities.
- Align standards with the Natural Resources Protection Act.
- Create a minor projects permitting process for minor added projects or revisions to large projects that have already been approved under Site Law to reduce administrative burden of these smaller initiatives.
 - **Governor's proposed amendment to LD 1 (RFR)**
 - **LD 159; Saviello; An Act To Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management (ENR)**
- Increase the minimum size requirement and minimum subdivided lots requirement of a development or facility to trigger this regulation. Reduce the length of impact of DEP compliance orders under this statute to 15 years. Reject DEP's proposed new standards regarding "scenic impacts", which are already regulated by the Natural Resources Protection Act.
 - **Governor's proposed amendment to LD 1 (RFR)**
 - **LD 159; Saviello; An Act To Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management (ENR)**
- Reject DEP's proposed new standards regarding "community character", as these standards are accounted for in the work of local boards in the host municipality.
 - **No LRs or LDs identified**
- Reject DEP's proposed rule re: culverts.
 - **No LRs or LDs identified**
- Review and improve the process by which DEP regulates municipal snow dumps and eliminate fees for this filing process.
 - **LD 333; Briggs; Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps (ENR)**
- Revise DEP Rules Chapter 418 (Beneficial Reuse) to eliminate significant hurdles to beneficial reuse of materials that would otherwise be classified as a waste by DEP.
 - **Governor's proposed amendment to LD 1 (RFR)**

- Modify DEP Chapter 405 Solid waste rules that require continued monitoring where there is any statistically significant increase in groundwater constituents irrespective of its impact (e.g., groundwater still meets drinking water standards).

- **No LRs or LDs identified**

- Direct the DEP to review its Solid Waste regulations relative to those in other states and recommend regulatory changes to make them less comparatively stringent, paying specific attention to:

- beneficial reuse of materials for fuel
 - odor standards

- **No LRs or LDs identified**

- Clarify stormwater requirements by adding clear and understandable definitions and guidance.

- **No LRs or LDs identified**

- Streamline stormwater requirements regarding use of proprietary systems.

- **No LRs or LDs identified**

- Direct DEP to concur with EPA on the general stormwater permit that is currently under development by the EPA for the 6 New England states and not to exceed EPA standards

- **No LRs or LDs identified**

- Incorporate Aboveground Storage Tank regulations with UST regulations for uniform regulation under the DEP. Currently these duties are split between the Fire Marshal's Office and the DEP.

- **No LRs or LDs identified**

- Streamline Chapter 691 Underground Storage Tank Regulations.

- **LR 1219; Courtney; An Act To Extend the Use of Underground Storage Tanks (ENR)**

- Direct, by legislative resolve, the DEP to develop a single set of rules regulating the storage of petroleum products in gravel pits and quarries subject to state regulation.

- **LD 253; Knapp; Resolve, To Establish a Single Construction Permit for Aboveground Oil Storage Tanks in Gravel Pits and Quarries (ENR)**

- Remove the requirement that a water quality reserve of 15% be kept for new or changed discharges. In the past 20 years, there have been very few new dischargers in Maine.

- **No LRs or LDs identified**

Land Use Regulation Commission

- LURC related bills and LRs (not listed by any particular sub-category)
 - **LD 17; Davis; An Act to Reform the Land Use and Planning Authority within the Unorganized Territories of the State (ACF)**
 - **LR 1494; McCabe; Resolve, To Improve the Predictability of Land Use Regulation in the Unorganized Territories (ACF)**
 - **LR 1640; Gifford; An Act To Streamline the Maine Land Use Regulation Commission (ACF)**
 - **LR 1899; Sherman; An Act To Improve Land Use Planning and Permitting in Unorganized Territories (ACF)**
 - **LR 1053; Saviello; An Act To Expedite the Review of Certain Maine Land Use Regulation Commission and Department of Environmental Protection Applications (ENR)**
- Require that not less than 30% of the LURC jurisdiction be zoned for development..
- Remove the “demonstrated need” requirement from LURC statutes.
- Require that LURC eliminate the adjacency criterion from its rules and Comprehensive Land Use Plan.
- Direct LURC to re-write the Comprehensive Land Use Plan to be consistent with the statute.
- Amend the LURC statutes to remove the prohibition on approving projects unless “adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources...”.

Other Natural Resources Agencies

- Change the reporting structure of the Board of Pesticide Control staff to have them report to the Department of Agriculture staff, eliminate their director and assign those responsibilities to an Agriculture staffer and remove the chain of reporting that goes through the board.
 - **No LRs or LDs identified**

Annotated by the Office of Policy and Legal Analysis

- Require IF&W to provide comprehensive evidence of wildlife habitat before delaying projects for it.
 - **No LRs or LDs identified**